No. 84-1028

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NEWS PUBLISHING CO.,
d/b/a ROME NEWS TRIBUNE,

Petitioner,

vs.

BRONDON E. DeBERRY,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals of the State of Georgia dated July 12, 1984 (as corrected July 27, 1984) is reproduced in its entirety in Appendix C of Petitioner's brief, *News Publishing Co., d/b/a Rome News Tribune vs. Brondon E. DeBerry*, 171 Ga. App. 787 (1984).

JURISDICTIONAL STATEMENT

This libel case was tried in the Superior Court of Floyd County, Georgia. A jury awarded the Plaintiff $75,000 in compensatory damages.

Petitioner appealed the judgment to the Court of Appeals of the State of Georgia. The judgment was affirmed by that Court in an opinion dated July 12, 1984 (as corrected July 27, 1984). (Appendix C of Petitioner's brief.)

The Supreme Court of Georgia denied the newspaper's Petition for Writ of Certiorari on September 7, 1984. Petitioner's Motion for Reconsideration was denied on October 1, 1984. (Appendix D of Petitioner's brief.)

Jurisdiction over this matter is conferred upon this Court by 28 U.S.C. § 1257(3) (1976).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."

The Fourteenth Amendment to the United States Constitution provides in part:

> No State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

[Petitioner has contoured its Statement of the Case to suggest that the only evidence adduced by Respondent at trial was that Petitioner and its reporters at most had failed to investigate sufficiently before publishing. Petitioner also implies that Respondent's evidence generally failed to satisfy his burden of proving actual malice with convincing clarity. For these reasons, Respondent feels constrained to provide a more detailed recitation of the relevant facts.]

The Respondent, Brondon E. DeBerry, filed suit against the Petitioner, News Publishing Company, d/b/a Rome News-Tribune, alleging he had been libeled by an article published in the Tribune on November 12, 1978.

At the time the article was published, Respondent was Deputy Warden of the Floyd County Correctional Institution. Specifically, Respondent alleged that the article contained a false and defamatory quotation which read: "Mr. DeBerry, upon seeing Mr. Knowles at the institution, stated that he, Mr. DeBerry, was going to kill Mr. Knowles or have it done." The article, which was introduced at trial as Plaintiff's Exhibit No. 2, bore the headline: "At Floyd Correctional Institution, Little Evidence to Show State Probe Was Thorough." The quotation, which Respondent contended was libelous, was attributed to "a former C. I. inmate who requested his name be withheld for fear of reprisals." The "former C. I. inmate" was identified as Larry Hight The person whose life was supposedly threatened by Respondent was Roy Knowles, a county commissioner. The "sworn affidavit" of Hight was introduced at trial as Plaintiff's Exhibit No. 4. Both Hight and Knowles were represented by the same attorney, Wade Hoyt, III, from whom Petitioner's reporter, Nanette Payne, obtained "the sworn

affidavit." The article containing the libelous quotation was published after two separate investigations, one conducted by the Georgia Department of Corrections and the other by the Floyd County Grand Jury, had cleared Respondent of any suspicion of misconduct as Deputy Warden (Plaintiff's Exhibit No. 2).

Knowles, who was also being sued by Respondent for having made certain slanderous statements, acknowledged he had been responsible for initiating the investigation of Respondent by the Georgia Department of Corrections. Knowles also admitted that on two occasions prior to the publication of the libelous article by Petitioner he had tried to have Respondent fired as Deputy Warden. However, he was unable to get a second from his fellow commissioners on either occasion. Knowles admitting having told Petitioner he would not have hired Respondent "in the first place," and that "as far as having any likes - - Mr. DeBerry, I have nothing for him."

Hight, on the other hand, was generally known to have a reputation in his community for dishonesty. Both Jim Free, Chief of the Floyd County Police Department, and Bill Riley, at one time Hight's immediate supervisor in the Floyd County Public Works Department, testified they would not believe Hight under oath. Indeed, on one occasion Hight approached Riley and admitted he had lied in his affidavit used by Petitioner. Riley added that Hight had told him he had been given groceries by Knowles "on several occasions" in exchange for information.

On the day before his discharge from the Correctional Institution, Hight stole a paint sprayer belonging to Floyd County and hid it in the trunk of his father's car; when Respondent learned about the theft, he threatened Hight

with criminal prosecution if Hight did not return the paint sprayer which Hight's father did immediately thereafter.

Respondent emphatically denied he ever threatened Knowles' life at any time, and said no representative of Petitioner ever contacted him to get corroboration for or refutation of Hight's accusations. Payne, one of Petitioner's reporters who wrote the story about Respondent, acknowledged the libelous article was "investigative," that it was in preparation for "several weeks," and that there was no pressure to complete it by a particular deadline. Payne wrote the libelous passage based *solely* on an affidavit alleged to have been executed by Hight, and the affidavit was prepared at the request of Petitioner because Hight failed to return a series of phone calls apparently made for the purpose of getting corroboration and elaboration. In fact, Payne had advised Knowles, the person Hight had accused Respondent of having threatened to kill or have killed, that Hight's accusations could not even be published until Petitioner obtained "something substantive from him (Hight)." Moreover, when all efforts to contact Hight personally had failed, Payne concluded "Mr. Hight really was hesitant - - it was my impression he was hesitant to talk to us directly." Prior to publication of the libelous story, Payne never saw Hight, never spoke to Hight, never checked the nature and extent of his criminal record, made no effort to determine why Hight had been in the Floyd County Correctional Institution and made no effort to contact the Respondent. During preparation of the story, Payne was unable to find anyone who could corroborate Hight's accusations, even though Payne contended Knowles had told her there were "several people" who supposedly heard Respondent make the threat against Knowles. However, Payne also testified she could not recall Knowles having given her any names.

Too, Respondent testified he learned during a deposition

taken prior to trial that he (Respondent) was alleged by Hight to have made the threat against Knowles in the general vicinity of a rock crusher outside the correctional institution. However, Respondent added that Hight was assigned to the water department when the threat was supposed to have been made, and that "the water department didn't work around the rock crusher."

Respondent testified he had a conversation with David Royal, another reporter for Petitioner who participated in writing the libelous article, "about two or three weeks *before*" the article was published. He recalled that Royal had said Petitioner did not believe the investigations of Knowles' accusations against Respondent had been "thorough." Referring to criticism by the Grand Jury of Petitioner's coverage of the investigations, Royal told Respondent: "My publisher and editor is (sic) going to prove that that Grand Jury up there were wrong . . . They'll walk over you like you didn't exist. They're going to prove that that Grand Jury was wrong." Petitioner never denied Royal made the statement.

Coleman Prophett, an editor for Petitioner at the time the libelous article was published, acknowledged he had read the Grand Jury's presentments criticizing Petitioner and they (presentments) "probably aggravated me . . . If they said that at the time (that they wished the news media would be more accurate), it probably upset me."

Petitioner called Professor George Greiff of Georgia State University's Department of Journalism, who was liberally qualified as an expert on the proper standards to be followed in the preparation of an investigative news story. The gist of Professor Greiff's testimony was that there are generally recognized minimal standards to be followed in the preparation of an investigative news story, and that these standards

include "evaluation of the source" of the information, "seeking statements from other witnesses corroborating the charge," and "being fair to both sides and making every reasonable attempt to get both sides of the story." Moreover, Petitioner did not meet the minimal standards for preparation of an investigative news story, Professor Greiff testified.

Both Payne and Royal corroborated Professor Greiff's testimony. Royal, for example, testified that it is a standard practice in journalism to "get both sides of the story," particularly when someone's integrity is being attacked. He also conceded "it is sound journalistic practice" in preparing an investigative news story "to get corroboration" for a serious charge involving someone's integrity. However, both Royal and Payne acknowledged they made no effort to contact Respondent about Hight's accusations before publication of the libelous article. Too, Prophett acknowledged that "any good reporter. . . tries to substantiate information."

The jury returned a verdict for Respondent in the amount of $75,000.00 in compensatory damages. The Georgia Court of Appeals affirmed, and the Georgia Supreme Court denied certiorari. (See Petitioner's Appendices C and D.)

ARGUMENT

THIS COURT SHOULD NOT INDEPENDENTLY REVIEW THE EVIDENCE UNDER THE AUTHORITY OF *BOSE V. CONSUMERS UNION* BECAUSE THE GEORGIA APPELLATE COURTS CORRECTLY HELD THE EVIDENCE SUPPORTED A FINDING OF ACTUAL MALICE.

In *Curtis Publishing Co. vs. Butts*, 388 U.S. 130 (1967), this Court recognized there are two major categories of news story: (1) the "hot news" story and (2) the "investigative" story (388 U.S. 156, 157, 158). The Court strongly implied the media will be held to a higher standard of accountability when an investigative news story is involved, apparently on the premise that there is little, if any, justification for a lack of thoroughness when the reporter has ample time to research the story fully and carefully. In *Curtis*, the Court expressly approved of the fact that the jury had been instructed to consider "the reliability, the nature of the sources of Defendant's information, its acceptance or rejection of the sources, and its care in checking upon assertions" in making a determination of whether the Defendant had published with reckless disregard of the truth or falsity of the story (388 U.S. 156).

In *St. Amant vs. Thompson*, 390 U.S. 727 (1968), this Court was highly instructive in establishing standards by which a publisher could properly be found to have published with actual malice. It noted that the terms "reckless disregard," which is one component of the actual malice rule, "cannot be fully encompassed in one infallible definition. Inevitably, its outer limits will be marked out through case-by-case adjudication . . ." (390 U.S. 730). The Court added: "The Defendant in a defamation action brought by a public official cannot. . . automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact must determine

whether the publication was indeed made in good faith. Professions of good faith will be unlikely to prove persuasive, for example, where a story is . . . based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports. " (390 U.S. 732).

Indeed, several recent cases from other jurisdictions have permitted recovery by public figures and public officials upon a showing of actual malice far less compelling than what is involved in the instant case. See, e. g., *Fitzgerald vs. Penthouse*, 691 F.2d 666 (4th Cir. 1982) and *Pep vs. Newsweek*, 553 F. Supp. 1000 (S.D.N.Y. 1983).

In *Fitzgerald*, Penthouse magazine published an article which contained a passage the Court held was capable of being read to accuse Fitzgerald of espionage (691 F.2d 670). The Court discussed at length the primary source of the magazine's article, one Michael Greenwood, and found there were obvious reasons to doubt the veracity of Greenwood and the accuracy of his reports (691 F.2d 671, 672). Moreover, the Court held Penthouse "should have done more than it did to authenticate its source for the publication at issue" and emphasized that no attempt was made to contact Fitzgerald to verify Greenwood's allegations (691 F.2d 671, 672). Accordingly, the Court concluded, Fitzgerald had "presented a factual question as to the reliability of Greenwood" and Penthouse's " 'obvious reason to doubt' the veracity of their informant." On that basis, the Court reversed the entry of summary judgment for Penthouse. In so holding, the Court relied on the cogent language of *St. Amant vs. Thompson*, 390 U.S. 727 (1968), for determining that Fitzgerald had raised a jury question on the

issue of whether Penthouse had published with actual malice as Respondent alleged Petitioner had done in the instant case. In *St. Amant*, the Court said an Appellant in a defamation action brought by a public official would not automatically prevail merely by testifying he believed his story was true, particularly "where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports" (390 U.S. 732).

In *Pep*, Inside Sports, a magazine published by *Newsweek*, ran an article implying that Willie Pep, a former championship boxer, had "fixed" a fight held on February 26, 1954 (553 F. Supp. 1001). The magazine's primary source for the article was one Norman Brett, who was known by Newsweek to be a convicted felon, a compulsive gambler and as a person who had described himself as a "pathological liar" (553 F. Supp. 1001). The Court found there were "obvious reasons to doubt the veracity" of Brett, and because of that "a reasonable jury could find that *Newsweek* employees published with actual malice" (553 F. Supp. 1003). On that basis, the Court denied Appellant's motion for summary judgment (553 F. Supp. 1003).

Of course, there were obvious reasons to doubt the veracity of Larry Hight, Petitioner's only source for the libelous passage of the story about Respondent in the instant case. Indeed, the factors which prompted the Courts to rule as they did in *Fitzgerald* and *Pep* are scattered liberally throughout the record of this case. For example, Payne, one of Petitioner's reporters who wrote the story about Respondent, acknowledged the story was "investigative", that it was in preparation for "several weeks," and that there was no pressure to complete it by a particular deadline. Payne wrote the libelous passage based solely on an affidavit alleged to have been executed by Hight, and the affidavit was prepared at the request of Petitioner because Hight failed to

return a series of phone calls apparently made for the purpose of getting corroboration and elaboration. In fact, Payne had advised former Floyd County Commissioner Roy Knowles, the person Hight had accused Respondent of having threatened to kill or have killed, that Hight's accusations could not even be published until Petitioner obtained "something substantive from him (Hight). Moreover, when all efforts to contact Hight personally had failed, Payne concluded "Mr. Hight really was hesitant - - it was my impression he was hesitant to talk to us directly." Prior to publication of the libelous story about Respondent on November 12, 1978, Payne never saw Hight, never spoke to Hight, never checked the nature and extent of his criminal record, made no effort to determine why Hight had been in the Floyd County Correctional Institution and made no effort to contact Respondent for corroboration or refutation of Hight's accusations. During preparation of the story, Payne was unable to find anyone who could corroborate Hight's accusations, even though Payne contended Knowles had told her there were "several people" who supposedly heard Respondent make the threat against Knowles. Because Payne had made absolutely no personal contact with Hight prior to publication of the story, visually, telephonically or otherwise, because she knew nothing about his criminal record or whether he had any axe to grind with Respondent or whether he had had any "run-ins" with Respondent as an inmate prior to making the accusations against Respondent, and because her only knowledge of Hight came from the affidavit itself, Payne acknowledged on cross-examination that "for all intents and purposes, Larry Hight was just as anonymous to " her as he was to those who read the story. (Hight supposedly asked that his name be withheld from the story, so Petitioner identified him only as "a former C. I. inmate, who requested his name be withheld for fear of reprisals . . .". This is especially significant in view of this

Court's declaration in *St. Amant vs. Thompson*, 390 U.S. 727, 732 (1968), that actual malice could be found where a story is based "wholly on an unverified anonymous telephone call." Unquestionably, Respondent by clear and convincing proof, demonstrated that Petitioner published with actual malice, not only because there were obvious reasons to doubt the veracity of Hight and the credibility of his accusations, but also because reliance on Hight's affidavit, alone, under the circumstances of this case, was tantamount to relying on a wholly unverified anonymous telephone call (390 U.S. 732). It must also be pointed out that Respondent emphatically denied he ever threatened Knowles' life at any time, and that no representative of Petitioner ever contacted him to get corroboration for or refutation of Hight's accusations. Too, Respondent said he learned during a deposition taken prior to trial that he (Respondent) was alleged by Hight to have made the threat against Knowles in the general vicinity of the rock crusher outside the correctional institution. However, Respondent added that Hight was assigned to the water department when the threat was supposed to have been made, and that "the water department didn't work around the rock crusher." Therefore, Hight would not have been where he said he was when the threat was supposed to have been made. Petitioner would have learned that had it bothered to contact Respondent during the preparation of the libelous story. Too, Petitioner would also have learned that on the day before he was discharged from the correctional institution, Hight took a paint sprayer belonging to Floyd County and hid it in the trunk of his father's car, and that when Respondent learned about it, he threatened Hight with criminal prosecution if Hight did not return the paint sprayer which Hight's father did immediately thereafter.

In *Garrison vs. Louisiana*, 379 U.S. 64 (1964), this Court

declared: "[f]ailure to investigate does not *in itself* establish bad faith" (390 U.S. 733). However, the Court clearly did not declare a failure to investigate to be of no importance whatsoever in determining whether an article had been published with actual malice. Rather, a failure to investigate was clearly intended to be one of several factors which the trier of facts could consider in making its determination. This has been recognized by courts in several state jurisdictions. In *Stevens vs. Sun Publishing Co.*, 240 S.E.2d 812 (S. C. 1978), for example, the Court found that the Appellee had published with actual malice, adding that "actual malice is established when reporters and publishers depart from responsible standards of investigation and print articles on the basis of an admittedly unreliable source, without further verification" (240 S.E.2d 815). Too, in *Akins vs. Altus Newspapers, Inc.*, 609 P.2d 1263 (Okl. 1980), the Court found that Appellee had published with actual malice because the evidence showed the Appellee's reporter had made no personal contact with anyone involved in the incident before writing his news story and before its publication (609 P.2d 1266). It is obvious from even the most cursory consideration of the evidence in the instant case that Petitioner made no effort whatsoever to investigate the charges against Respondent, and that it made no personal contact with anyone involved in the incident before writing and publishing the news story and that it departed from responsible standards of investigation and printed the story on the basis of an obviously unreliable source without further verification.

George Greiff, professor of journalism at Georgia State University in Atlanta, testified, after being liberally qualified as an expert, that there are generally recognized minimal

standards to be followed in the preparation of an investigative news story, and that these standards include "evaluation of the source" of the information, "seeking statements from other witnesses corroborating the charge," and "being fair to both sides and making every reasonable attempt to get both sides of the story." Moreover, Petitioner did not meet the minimal standards for preparation of an investigative news story, Professor Greiff testified.

Petitioner's reporters, who prepared the libelous story, and Coleman Prophett, who edited the story, corroborated Professor Greiff's testimony in every significant detail. Reporter David Royal, for example, testified on cross-examination as follows:

> "Q: And isn't it also true, Mr. Royal, that it is a cardinal rule of journalism that when you're doing an investigative story in which you are attacking someone, that you - - you get the other side of the story? You get the - - the point of view of the target of the story, isn't that true?
>
> A: You attempt to get the truth of the matter, as a general rule. If you are attacking a person, you try to get both sides.
>
> Q: All right. In fact, that is the standard practice in journalism, isn't it?
>
> A: That you get both sides of the story?
>
> Q: Yes?
>
> A: Yes, sir." (T-230)

Moreover, Royal and Payne acknowledged they made no effort to contact Respondent about Hight's accusations before publication of the libelous story.

Royal also testified on cross-examination:

"Q: Would you not agree that it is sound journalistic practice, whenever you have an investigative news story which makes such a serious attack on someone else, to try to get corroboration for that particular charge that is being made against someone?

A: Yes, sir." (T-235)

Payne testified on cross-examination as follows:

Q: . . . Ms. Payne, certainly one of the - - of the things that every good journalist tries to do in reporting a story, is to get both sides or all sides whenever possible, isn't that true?

A: That's correct.

Q: In fact, that is a - - a basic, cardinal rule of good journalism to do that, isn't it?

A: Right.

Q: And the reason for that is because you want to present a balanced and as nearly accurate account of whatever it is you're reporting about as you possibly can, isn't that true?

A: Yes.

Q: And, also, because you want to be fair to everyone involved in the story, isn't that true?

A: That's correct. (T-289)

Prophett testified on cross-examination as follows:

Q: . . . And I assume that certainly you require that all of your reporters, that they research a matter fully and completely before putting it into print, is that not true?

A: That's correct.

Q. And one of the primary goals of the News-Tribune insofar as reporting the news . . . is concerned, would be accuracy in its reporting, isn't that true?

A: Certainly, yes, sir.

Q: And also one of your goals . . . would be to be fair to everyone concerned when you're writing a story about that person, isn't that true?

A: That's true.

Q: . . . Even if that story happens to reflect unfavorably on them in some respects?

A: Yes. (T-334)

On direct examination by Petitioner, Prophett acknowledged that "any good reporter, I think, tries to substantiate information," and that among the "general rules" a journalist should follow "in preparing any story" is "to make sure that his information is accurate . . . that it's written clearly for . . . a reader to understand." Too, it was a policy of Petitioner to give a person against whom a serious accusation had been made an opportunity to respond.

As justification for its reliance on nothing more than Hight's affidavit, Petitioner notes that Hight "testified at trial that his affidavit was true and correct, and that he had in fact heard DeBerry threaten Commissioner Knowles. Further, another witness, Mr. Donald Jones, took the stand and swore at the time of trial that he had heard Mr. DeBerry make the statement complained of." (Petitioner's Brief at p. 3.)

However, Petitioner's assertion wholly ignores several critical facts. First, Hight contradicted the wording of the affidavit which he supposedly dictated. After being shown

the document and stating that it had been written verbatim as he dictated it, Hight acknowledged that Respondent had not said what was attributed to him in the affidavit. Rather, Respondent supposedly said: "I'm either going to kill him (Knowles) or have the son of a bitch killed." Hight explained he simply did not tell his lawyer, who wrote the affidavit, that Respondent had referred to Knowles as a "son of a bitch" rather than by his (Knowles') name. Second, Hight conceded Respondent had threatened to charge him with a theft crime after discovering he (Hight) had concealed and hauled away from the correctional institution a paint sprayer which belonged to the government of Floyd County. The theft occurred as Hight was being discharged from the correctional institution. Third, Hight admitted he waited four to six weeks before telling Knowles of the alleged threat; that he (Hight) had not taken the alleged threat seriously; that he had never reported it to the police or to anyone else other than Knowles; that he "didn't care one way or the other" that the alleged threat had supposedly been made; that he had a long criminal record; and that he had been a fugitive for more than two years immediately prior to testifying at trial.

Fourth, the chief of the Floyd County Police Department, Jim Free, and Bill Riley, Hight's former supervisor at the Floyd County Water Department, both testified that Hight was known to be a compulsive liar, and that they would not believe him under oath.

Fifth, Donald Jones, who also supposedly heard the alleged threat, never reported having heard it until just before the time of trial, and admitted he had never been contacted by Petitioner before the time of trial. Jones also revealed he rented a trailer home from Knowles; that he considered Knowles a close friend; that he was very embittered toward Respondent because he blamed Respondent

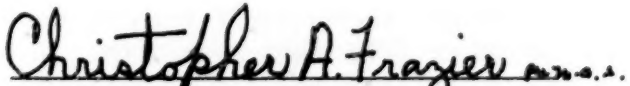
for having had him transferred to a correctional institution outside Floyd County where his family lived; that he , too, had a long criminal record; and that he had a closer relationship with Hight than with any other inmate he knew while in prison.

Thus, it is clear that Respondent presented at trial a surfeit of "clear and convincing evidence" that Petitioner published the offending article with actual malice. It is difficult to imagine a set of facts more cogently and presuasively demonstrating reckless disregard for the truth, and this Court does not need to conduct an independent review of the evidence in this case under the authority of *Bose Corp. v. Consumers Union of the United States*, ____ U.S. ____ , 82 L.Ed.2d 863 (1984).

CONCLUSION

For the reasons set forth in this brief, Respondent respectfully urges this Court to affirm the holdings of the Georgia Court of Appeals and Georgia Supreme Court that the evidence amply supported the jury's finding of actual malice.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I am attorney for Respondent in this case, and that I have this day served the within and foregoing Brief of Respondent Brondon E. DeBerry, upon the Petitioner in this case by mailing a copy before filing in a properly addressed envelope with sufficient postage attached to the attorney of record for the Petitioner as follows:

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janitorial job in the Housing Department as he had requested. His false arrest suit against defendant city was settled for $105,000.

[ATLA Member Sol E. Goldberg, Southfield, Mich. represented plaintiff.]

NEGLIGENT HIRING: EXTERMINATING COMPANY EMPLOYEE WITH CRIMINAL RECORD: RAPE OF CUSTOMER: SETTLEMENT.

Floeter v. Terminix of Austin, Inc., Tex., Travis County 201st District Court, No. 328,905, Nov. 2, 1982.

$120,000 settlement for the rape of a 32 year-old woman by an employee of defendant exterminating company.

Evidence revealed that defendant's employee had unlocked a window at plaintiff's house while spraying for termites and returned a few nights later to commit the rape. The rapist, who had only been cursorily investigated when he was hired, had been convicted of rape, terroristic threat arising from an attempted rape, and aggravated assault arising from a rape in the 5 1/2 years before he was hired.

ATLA Member Tommy Jacks, Austin, Tex. represented plaintiff.]

NEWSPAPER LIBEL OF PUBLIC OFFICIAL.

Beimel v. Ridgway Publishing Co., Pa., Elk County Court of Common Pleas, No. 80-22, Sept. 21, 1982.

$27,500 jury verdict in favor of plaintiff city commissioner for libel by a local newspaper.

Plaintiff, a city commissioner in Pennsylvania, sought and obtained employment in Idaho following his defeat in a political primary. The local newspaper, owned and operated by defendant, published a front page article about plaintiff entitled "Legal Yes, Ethical No!" The article intimated that plaintiff intended to serve out the balance of his term and collect his salary as commissioner while holding a job and living in another jurisdiction. Plaintiff brought a libel action alleging that the article taken as a whole was false and imported a charge of double-dipping. Expert testimony indicated that the news story, which was based primarily on an anonymous telephone call, violated accepted standards of journalism. The court instructed the jury that plaintiff, as a public official, was required to prove actual malice in order to recover.

[ATLA Member Nicholas F. Lorenzo, Jr., Punxsutawney, Pa. represented plaintiff.]

LANDLORD-TENANT

CONCRETE WALL COLLAPSE: FAILURE TO REPAIR: SPINAL FRACTURE: QUADRIPLEGIA.

Bustillo v. St Paul Insurance Co., Fla., Palm Beach County Circuit Court, No. 812741 CA(L)01D, Sept. 9, 1982.

$3.25 million jury verdict for a 16-year-old girl rendered quadriplegic when a concrete block wall collapsed.

Plaintiff and her mother were tenants of a second-story apartment in defendants' building. Shortly after moving in, plaintiff's mother noted that one of the concrete blocks in a wall which surrounded their porch was loose. She requested repair of the wall and assumed that the repair had taken place. However, defendants took no action to re-

pair the defect and as plaintiff leaned against the wall to speak with a friend in the carport below, two concrete blocks gave way, causing plaintiff to fall to the concrete driveway. Plaintiff sustained a spinal fracture at C-5, rendering her immediately quadriplegic. She brought suit alleging negligent failure to repair a known defect. Defendants contended that plaintiff's mother had not complained about the wall and that they were not aware of a defect. The jury's verdict includes an award of $250,000 to plaintiff's mother for past medical expenses. Plaintiff offered to settle with defendants for their $300,000 insurance policy limits before the verdict, but defendants' insurer did not immediately tender its policy limits. Defendants are now proceeding against their insurer for bad faith refusal to settle the claim.

Plaintiff has limited motion of the shoulders and is confined to a wheelchair. Her future medical care will cost an estimated $80,000 per year.

[ATLA Members Lake Lytal, Jr. and Robert M. Montgomery, Jr., both of West Palm Beach, Fla., represented plaintiff.]

PREMISES

CONSTRUCTION SITE: INADEQUATE SECURITY: SEXUAL ASSAULT IN ADJACENT APARTMENT BUILDING: VISION LOSS: HEMIPARESIS:

Strubing v. Crystal Management, N.Y., New York County Supreme Court, Index No. 20357/79, July 13, 1982.

$3,000,000 jury verdict for a 73-year-old woman who was physically and sexually assaulted in her apartment by an intruder who climbed into her garden from an unsupervised

construction site.

Plaintiff brought suit against defendant landlord and defendant managing agent alleging that their failure to provide sufficient light in the backyard area and their placing of a step ladder in close proximity to her apartment constituted active negligence. Defendants impleaded a construction company which was working on an adjacent lot, alleging that plaintiff's assailant had entered the unguarded construction site and used a construction ladder to climb into plaintiff's backyard. The jury allocated liability 75% to the construction company and 25% to plaintiff's landlord.

APPENDIX A